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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,667

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Minoru Kuroda

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,667	<b>Applicant(s)</b> KURODA ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/06/09</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's amendment filed March 3, 2009, has been entered. The specification and claims 1 and 5 have been amended as requested. Claim 7 has been cancelled. Thus, the pending claims are 1-6 and 8.

### *Claim Rejections - 35 USC § 112*

2. Claim 5 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite as set forth in section 4 of the last Office Action (Non-Final Rejection mailed 12/03/08).

3. Applicant's amendment to claim 5 is insufficient to overcome the rejection since the claim still recites "the shorter pile part is a shrinkable fiber." According to the specification, the short pile is formed by shrinking said shrinkable fiber. In other words, the short pile of the final product comprises shrunk fibers. Hence, it is unclear if applicant intends to claim the **final product** having *a short pile of shrunk fibers* or the **intermediate product** comprised of *shrinkable fibers* capable of being shrunk to form said short pile portion.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as obvious over JP 11-350298 A issued to Saito et al.

Said claims were previously rejected under 35 USC 102(b) as being anticipated by the cited Saito reference. However, the limitation of claim 7, which was previously rejected under 35 USC 103(a), has been incorporated into the claim 1. As such, the anticipation rejection is withdrawn, but the obviousness rejection remains for reasons analogous to those set forth in sections 7 and 8 of the last Office Action.

Applicant has also amended claim 1 to limit the pile fabric to “being obtained by knitting a mixture of a fiber constituting the shorter pile part and a fiber constituting the longer pile part.” However, said amendment is insufficient to overcome the standing rejection since Saito also teaches the pile fabric is made by blending the different fibers into a mixture and then knitting a pile fabric (abstract and section [0020]).

Applicant has also amended claim 1 to narrow the range of the (DL/DS) ratio. However, as noted in the last Office Action, page 4, lines 4-8, three working examples have (DL/DS) ratios, *prior to shrinking*, of 5/6, 5/7, and 2/3 (0.83, 0.71, and 0.67), (see Table 1, Example 12 and Table 2, Examples 6 and 8). As such, it is reasonable to presume that said ratio, after shrinking, in the final product will meet applicant’s claimed range.

Hence, claims 1-5 and 8 are rejected as being obvious over the cited Saito reference.

6. Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Saito reference as applied to claims 1 or 2 above, and further in view of US 5,976,693 issued to Miyoshi et al. as set forth in section 9 of the last Office Action.

***Response to Arguments***

7. Applicant's arguments filed with the amendment of March 3, 2009, have been fully considered but they are not persuasive.

8. Applicant traverses the rejection by asserting that the Saito reference fails to teach or suggest the claimed longer pile length and the pile length differential (Amendment, page 5, 6<sup>th</sup> paragraph). The examiner agrees the reference does not teach these limitations. However, as argued in the last Office Action, the pile length would have been an obvious to a skilled artisan. Specifically, the length of pile, and hence, the step pile differential, in a synthetic fur fabric such as that disclosed by Saito is limited by the natural pile length and step differential which is being simulated. A skilled artisan can easily determine suitable pile lengths and differentials.

9. Applicant also argues that the reference does not teach the claimed (DL/DS) ratio (Amendment, page 6, 1<sup>st</sup> paragraph). In particular, applicant employs the fineness of fiber (A) for the DL value. By this calculation, applicant asserts all the samples exceed a (DL/DS) ratio of 0.8 (Amendment, page 6, 1<sup>st</sup> paragraph). While this may be true, it is noted that said values are prior to shrinking. As such, said the disclosed values of Saito cannot be directly compared to the range claimed by applicant since applicant's values reflect the values after being shrunk.

10. When the (DL/DS) ratio is calculated by using the fineness of fiber (B) instead of fiber (A), applicant argues that all the values of Table 1 exceed 0.8 (Amendment, page 6, 2<sup>nd</sup> paragraph). Additionally, applicant argues while Comparative Examples 6 and 8 of Table 2 may teach (DL/DS) ratios between 0.15 and 0.8, the examples have inferior properties which would teach away from the present invention (Amendment, page 6, 2<sup>nd</sup> paragraph). The examiner respectfully disagrees. First, the present claims do not exclude embodiments having specific

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handling or recovery properties. Secondly, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 169 USPQ 423. “A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use.” *In re Gurley*, 31 USPQ2d 1130. Hence, applicant’s argument is found unpersuasive.

11. Applicant also argues that the Saito reference fails to disclose that the short pile portion has a flat cross section shape (Amendment, page 6, 3rd paragraph). In response, Saito teaches the short pile portion has a flatness ratio of 1.8-5 (abstract). Since applicant’s flat cross section shape encompasses a flatness ratio of 5-15 (see claim 3), Saito’s teaching meets applicant’s limitation (i.e., the upper endpoint of Saito overlaps applicant’s lower endpoint). Therefore, applicant’s argument is found unpersuasive and the above rejections are maintained.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached at 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794

cj  
June 2, 2009